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HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (F) NO. 3614 OF 2006.
IN
FIRST APPEAL NO. 148 OF 2006.

Shushma Rajendra Pandey
& Ors. ..Applicants.
Versus.
Maharashtra State Road Transport
Corporation & Ors. ..Respondents.

AND
CIVIL APPLICATION (F) NO. 3616 OF 2006.
IN
FIRST APPEAL NO. 1 OF 2006.

Shushma Rajendra Pandey
& Ors. ..Applicants.
Versus.

1. The New India Assurance Co. Ltd.
2. Maharashtra State Road Transport
Corporation &
Ors. ..Respondents.

Mr. G. R. Rege Sr Counsel i/b Ms. L. R. Sawant for the applicant.

Mr. C. M. Lokesh i/b G.S.Hegde for the respondent -MSRTC.

Mr. S. M. Vidyarthi for the respondent - the New India Assurance Company.

CORAM: S. B. MHASE &
SMT. NISHITA MHATRE, JJ.

DATE: MARCH 06, 2007.

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1. Heard both sides. The deceased was driving the motor cycle belonging to the respondent no.4 (Rajesh Tukaram Gurav) which was insured with the respondent no.1 - Insurance Company (in Civil Application No. 3616 of 2006). The said vehicle met with an accident with the ST Bus of the MSRTC, and therefore taking into consideration this aspect the Tribunal directed the owners of the two vehicles and Insurance Company to pay 50% - 50% of the amount of compensation. The Insurance Company has deposited 50% amount of the total compensation. So also the MSRTC has deposited 50% amount. The claimants have approached to this Court for withdrawal of the said amount.

2. Mr. S.M.Vidharthi, learned counsel for the Insurance Company - respondent no.1 in Civil Application No. 3616 of 2006, submitted that the deceased cannot be treated as "third party", because the deceased was driving vehicle which he had taken on gratuitous basis from the owner of the vehicle (ie., respondent no.4), and since the liability of the Insurance Company was in respect of the third party, the Insurance Company is not liable. We find that this is a triable issue which requires consideration in the main appeal. Therefore, we are not inclined to release the amount deposited by the Insurance Company in favour of the applicants - claimants. The prayer of the

applicants to make payment of the said amount is hereby rejected.

3. In respect of the remaining 50% amount of the total compensation which has been deposited by the MSRTC, prima facie, we find that the deceased would be a third party in respect of the MSRTC and therefore liability will arise. The question is about the quantum of liability. Taking into consideration the income, age, etc of the deceased we find it appropriate. However, taking overall view of the matter we find it appropriate that the 50% out of the 50% of amount of compensation deposited by the MSRTC, i.e., 25% of the whole compensation if released in favour of the applicants will meet the ends of justice. Therefore we pass the following order.

O R D E R.

1. The prayer of the applicants to release the amount deposited by the Insurance Company (i.e., respondent no.1 in civil application no. 3616 of 2006) is rejected.

2. However, it is directed that the said amount deposited by the respondent no.1 (Insurance Company) shall be deposited in the

Nationalised Bank initially for a period of three years, and if the appeal is not disposed of within that period, the said amount shall be further deposited on year-to-year basis till final disposal of the appeal and the trial Court shall act accordingly.

3. So far as the amount which has been deposited by the MSRTC is concerned, out of that amount only 50% amount, i.e., 25% of the total compensation, shall be released in favour of the claimants proportionately with the proportion as stated in the order passed by the Tribunal. Remaining amount, ie., 25% of the total compensation, deposited by the MSRTC shall be deposited in the Nationalised Bank initially for a period of three years, and if within that period the appeal is not disposed of, the amount shall be further deposited on year to year basis till the final disposal of the appeal.

4. Civil Applications are accordingly disposed of.

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(SMT. NISHITA MHATRE, J.) **(S.B.MHASE, J.)**